

Contracting with a Caterer Guidance Manual

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The contents of this publication were developed and produced through funds from the United States Department of Agriculture.

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Definition of Terms

For the purposes of this guidance, the term:

ADE means the Health and Nutrition Services Unit at the Arizona Department of Education.

Attachment means any item the Solicitation requires an Offeror to submit as part of the Offer.

Bid means an Offer to perform, in accordance with specifications and conditions, for a stipulated price.

Caterer means a commercial enterprise or a non-profit organization that is, or may be, contracted by the SFA to provide offsite food preparation and the delivery of unitized meals.

Child Nutrition Programs means the federally assisted meal programs operating in public and non-profit private schools and residential child care institutions.

Code of Federal Regulations (CFR) means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. Refer to CFR 3016.36 for the federal standards governing procurements made by state agencies, local education agencies and other local program operators. For more information go to:
www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3016_04.html

Competitive Sealed Proposals means a method of procurement whereby proposals are requested from a number of sources and the request for proposal is publicized, discussions are conducted, if applicable, with more than one of the sources submitting Offers and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive sealed proposals may be used if conditions are not appropriate for the use of competitive sealed bids. See RFP.

Competitive Sealed Bids means a method of procurement whereby sealed bids are publicly solicited and a firm fixed-price contract is awarded to the “Responsible” and “Responsive” bidder whose bid, conforming to all the material terms and conditions of the invitation for bid, is lowest in price. See Invitation for Bids (IFB)

Contract means a formal, legally enforceable, agreement duly executed by the authorized representatives of the SFA and the food services contractor that calls for the provision of services, materials, supplies or equipment by the food service contractor in accordance with all conditions and specifications in the bid/proposal documents, for a price to be paid by the SFA.

Contract Documents means the bid specifications, requirements and the invitation for bid, the request for proposal and the contract, as applicable.

Cost-type Contract means a contract in which the contractor is paid on the basis of the costs it incurs. The term includes cost-plus, fixed-fee contracts and subcontracts therein. However, the term does not include any subcontracts under a fixed-price contract.

Donated Foods (See USDA Foods)

Equipment means an article of tangible personal property that has a useful life of more than one year and an acquisition cost of \$1,000 or more. State law or policy may set stricter capitalization thresholds for equipment than the one set by federal standards.

Exhibit means any item labeled as an exhibit in the solicitation or placed in the exhibits section of the solicitation.

FNS means the Food and Nutrition Service of the United States Department of Agriculture (USDA).

Fixed-price means a price is guaranteed for a specific period of time.

Fixed-price Contract means any contract except a cost-type contract. The term includes firm fixed-price contracts. It also includes contracts under which the contractor is paid at a fixed rate per meal of service or unit of labor time.

Food Service Management Company (FSMC) means a commercial enterprise or a non-profit organization that is, or may be, contracted with by the SFA to manage any aspect of the school food service.

Invitation for Bids (IFB) means an instrument of competitive sealed bids. An IFB is used to publicly solicit sealed bids. An IFB contains specifications and pertinent attachments that clearly define the items or services needed in order for bidders to properly respond to the invitation.

Non-profit School Food Service means all food service operations conducted by the SFA principally for the benefit of school children, including all of the revenue which is used solely for the operation or improvement of such food services.

Offer means bid, proposal or solicitation.

Offeror means a vendor who responds to a solicitation.

Processor means, as defined in CFR 250.3, "... any commercial facility, which processes or re-packages USDA Foods. However, commercial enterprises which handle prepare and/or serve products or meals containing USDA Foods on-site solely for the individual recipient agency under contract are exempt under this definition."

Procurement means the process of obtaining goods and/or services in accordance with applicable rules and regulations.

Request for Proposal (RFP) means an instrument of competitive sealed proposals. The RFP is used to solicit proposals from a number of sources. The RFP identifies the goods or services needed, including all significant evaluation factors and the importance of each factor.

Responsible Offeror means an Offeror who is qualified by experience, equipped to perform the work required, or furnish the necessary material indicated in the specifications and who has the necessary financial backing and ability to complete the contract.

Responsive Offeror means an Offeror whose bid conforms to all the material terms and conditions of the IFB.

School Food Authority (SFA) means a sponsoring organization (district or charter) of the Child Nutrition Programs.

Solicitation means an Invitation for Bid (IFB), a Request for Proposals (RFP) or a Request for Quotations (RFQ).

Small Purchase means relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property.

USDA Foods means foods donated or available for donation by the United States Department of Agriculture (USDA).

Vendor means a merchandiser of complete meals, meal components, or raw materials.

Getting Started

Getting Started

Once a district or charter school decides to participate in Child Nutrition Programs (CNP), the next step is to decide which program(s) to participate in and who will prepare the meals for the students. The School Food Authority (SFA) should decide if they want to participate in the:

- National School Lunch Program (NSLP);
- School Breakfast Program (SBP);
- Special Milk Program (SMP);
- Fresh Fruit and Vegetable Program (FFVP)
- After School Care Snack Program (ASCS)
- Summer Food Service Program (SFSP); and
- Any combination of these programs.

Procurement Process

Procurement is the process of acquiring, by lease or purchase, goods and services including food, equipment, book-keeping, and auditing. The purpose of an effective procurement procedure is to ensure that such goods and services are obtained efficiently, economically and in compliance with State and Federal law.

An SFA participating in the CNP has the option of contracting with a caterer to obtain meals. Typically, a caterer will provide off-site food preparation and the delivery of meals to the SFA. Caterers are most commonly utilized by SFAs who do not have the facilities necessary to produce their own meals. The dollar amount of the food service agreement determines if an SFA can conduct either an informal or formal procurement.

Informal Procurement

If the combined value of the food service agreement is less than:

- \$50,000 for School Districts and Non-Exempt Charter Schools; or
- \$150,000 for Non-profits and Exempt Charter Schools.

Informal procurement contracting procedures may be used and an SFA may conduct a year-to-year contract with the caterer.

Informal procedures are used when the value of the food an SFA purchases from a Caterer for the school year is less than maximum cost threshold. The informal procurement procedure should include the following:

- Obtain price (or rate) quotes from at least three qualified sources;
- Maintain a written record of the quotes obtained;
- Maintain documented evidence of free and open competition at the best price; and
- Maintain documentation of the selection procedure.

Keep in mind that all documentation must be on file to support that the contracting procedures meet the requirements for fair and open competition.

Formal Procurement

Formal procurement contracting procedures are required, as outlined in A.R.S. 15-213 A.1 and R7-2-1041 of the Arizona School District Procurement Code. Even if a Charter School is exempt from the procurement code the Charter School must still comply with the Federal procurement guidelines per 7 CFR 3016.36 (b-i). USDA guidelines require all CNP participants to use formal procurement procedures when contracting for food and/or services if the total amount is \$150,000 or more.

Completing the Process

To contract with a Caterer, the SFA must follow the steps that are detailed in this manual. It is critical that these steps are followed, as they are requirements set forth by the federal and state procurement regulations to participate in any of the CNP. The federal and state regulations will be stated throughout this manual. Arizona Department of Education (ADE) suggests that each SFA allow adequate time to complete all steps to ensure all steps are done correctly. Please remember, this manual is provided as a resource tool to assist schools during the process and is not intended as an endorsement or recommendation by ADE to utilize the services of a Caterer. In addition, seeking legal counsel or advice is highly recommended when drafting a contract of any kind.

Achieving the Desired Results

Finally, it is important to remember that contracting with a Caterer does not allow the SFA to turn over all responsibilities required to operate the CNP. When contracting with a Caterer, the SFA will still be required to maintain and perform certain duties pertaining to the CNP operations.

Procedures for Procuring a Caterer

Mandatory Training

If the SFA must conduct a formal procurement, the SFA must attend the mandatory training provided by ADE titled “Contracting with a Caterer” before the solicitation process can begin.

Solicitation Documents

It is required that the SFA use the ADE RFP Template and RFP Evaluation Rubric for the solicitation process. If the SFA wants to make any modifications, they must receive approval from ADE prior to making any modifications. The documents that must be sent to ADE to obtain approval are:

- RFP Template; and
- RFP Evaluation Rubric Template.

ADE Approval

Before the solicitation process begins, the SFA must e-mail the solicitation materials outlined above to ADE to gain approval. Once the SFA has received ADE approval, the SFA may then begin the solicitation process.

RFP Release

The SFA is required to send the RFP to at least five (5) different vendors. If the RFP is sent to four (4) or fewer vendors then the SFA must advertise the RFP in a local newspaper and should run the ad for at least 14 days prior to the RFP closing. The SFA is required to send the approved procurement documents to each company on ADE’s *Vendor Contact List*. The SFA must allow a minimum of four (4) weeks for interested Caterers to complete and submit their proposal.

Evaluation Committee

The SFA must establish a committee to evaluate the RFP with at least three (3) members. The committee may be comprised of principals, teachers, parents, administrators, school board members or other individuals who may have involvement with the Child Nutrition Program/food service operation. Due to the complexity of the process, students should not serve as committee members.

ADE Approval of Selected Proposal

The selected proposal, with all supporting documents included, must be sent to ADE for final review and approval prior to obtaining signatures. Then ADE will notify the SFA, in writing, when all documents have been approved for signatures. Keep in mind, failure to obtain ADE approval before obtaining signatures from either party, will result in the withholding of federal funds until such time as the required documents are approved by ADE and new signatures are obtained. Before notifying the selected Caterer, the SFA must send ADE the following:

- Selected Caterer proposal;
- All evaluation committee members scores and comments for each proposal scored; and
- Copy of the vendor list that the RFP was sent to.

When ADE has ensured that the procurement meets all of the applicable Code of Federal Regulations (CFR), ADE will notify the SFA in writing. The SFA may then notify the “Caterer of Award” and then send ADE a copy of the signed Offer of Acceptance and Contract Award form.

The approved RFP, with all attached appendices, attachments, exhibits and amendments becomes the final contract between the SFA and Caterer when the Offer and Award form is signed.

SFA Responsibilities

Decision makers must remember that the SFA remains responsible for all administrative aspects of the food service program. They need to ensure that the program is being operated in the best interest of the SFA and the students. The SFA must ensure compliance with federal and state regulations. If it has been decided to use a Caterer, the SFA remains responsible for the overall operation of the CNP. Below are the responsibilities that the SFA must retain when contracting with a Caterer.

Development of Contract Documents

The SFA must prepare and submit to ADE all contract documents issued prior to the award of the SFA-Caterer contract. These documents include:

- Bid specifications;
- Invitation For Bid (IFB); and
- Request For Proposal (RFP).

Contract Review

The SFA ensures that ADE annually reviews each contract (including all supporting documentation) between SFA and Caterer prior to execution of the contract to ensure compliance with all the provisions and standards set forth in Part 210 and Part 250, Subpart D of the 7 CFR.

Program Oversight

The SFA makes certain that the food service operation is in compliance with the SFA's Food Program Permanent Service Agreement (FPPSA) with ADE. The SFA is ultimately responsible to ensure the SFA's FPPSA is followed and maintained during the entire contract term with ADE. The SFA is held responsible to resolve program reviews and audit findings.

Quality Control, Extent and Nature of Food Service

The SFA must retain control of the quality, extent, and general nature of the food service operation and the prices to be charged for children's meals. Such control must include:

- Retaining control of the nonprofit school food service account and overall financial responsibility for the school nutrition programs; and
- Establishing prices for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals, a-la-carte food services and adult meals, as applicable).

Signature Authority

The SFA retains signature authority on the FPPSA to participate in the NSLP, SBP, SFSP and SMP, including the SFA's free and reduced-price policy statement and the monthly Claim for Reimbursement.

Free and Reduced-Price Meal Process

The SFA maintains responsibility for the implementation of free and reduced price policy in accordance with 7 CFR Part 245. Such responsibilities include the conduct of any hearings related to such as; collection, determinations and verification of applications for free and reduced price meals, claim submission etc.

USDA Foods

The SFA retains title to USDA Foods and ensures that all USDA Foods received by the SFA are made available to the Caterer. Specifically, the SFA should:

- Ensure the Caterer credits the SFA for the value of all USDA Foods received for use in the SFA's meal service in the school year or fiscal year. All forms of crediting must include clear documentation of the value received from the USDA Foods.
- Ensure the USDA Foods are picked up at the SFA school site by the Caterer.
- Ensure that when the contract terminates and is not extended or renewed, the Caterer returns all unused donated ground beef, donated ground pork, etc.
- Ensure the Caterer meets the CFR general requirements for the storage and inventory management of USDA Foods.
- Ensure the Caterer has a system of inventory management which does not result in the SFA being charged for USDA Foods under cost-reimbursable contracts.

Health Certification

The SFA maintains applicable health certifications and assures that all State and local regulations are being met by a Caterer preparing or serving meals at an SFA facility.

Development of a 21- Day Menu Cycle

The SFA must develop a 21-day menu cycle in accordance with the meal pattern requirements specified in the CFR for the Caterer's proposal. The SFA must approve any changes to the menu cycle after the first 21 days of meal service.

Internal Controls

The SFA applies the internal control procedures required by CFR in the preparation of the monthly Claim for Reimbursement. The signature authority representative from the SFA will be the only individual with the rights and ability to submit monthly claims on the ADE CNP Internet Website. This duty shall not be delegated to the Caterer to complete.

Reports

The SFA completes all reports as required by ADE.

Beginning the Process

Before beginning the process to contract with a Caterer, the SFA must attend the mandatory training, titled “Contracting with a Caterer”. This training will provide the SFA with information on how to maneuver through the procurement process. The training will focus on:

- What steps an SFA must take during the solicitation process;
- How to develop an effective RFP; and
- Which CFR provisions must be followed.

Procurement Options and Procedure

Before an SFA can create and sign a contract with any Caterer, the SFA needs to decide how they will obtain the service. The process of deciding what type of procurement method to use is a critical step and should be carefully considered and planned. For more information please refer to the Arizona School District Procurement Code. The two most frequently used methods of procurement with costs above the competitive sealed bid (\$50,000) threshold for a Caterer are:

- Competitive Negotiation also known as Request for Proposal; and
- Competitive Sealed Bids also known as Invitation for Bid.

Competitive Negotiation: Also known as Request for Proposal (RFP), is a method of procurement whereby a technical proposal is solicited that explains how the prospective contractor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for an award, price remains the primary consideration when awarding a contract under the competitive proposal method. Contact ADE for assistance and more detailed information about allowable large purchase procurement procedures.

Factors to consider when using competitive negotiation (RFP) are:

- **Technical Skills Needed.** The SFA must possess the technical skills necessary to evaluate the proposals and negotiate with the offerors. These skills usually include knowledge of procurement and contracting, school food service, and financial management.
- **Legal Advice Needed.** The SFA's legal authority must be available to assure that the proposed contractual language reflects the agreement reached between the successful offeror and the SFA.
- **Monitoring Costs Required.** Under a cost-reimbursable contract, the SFA must independently monitor the costs incurred for compliance with 7 CFR Part 3015, Subpart T.
- **Careful Preparation of Evaluation Criteria.** The criteria that will be used to evaluate the proposals must be carefully prepared and be included in the RFP. These criteria must be followed in evaluating the proposals. Negotiations will be conducted with those offerors who exceed a pre-determined "cut-off" score.
- **Requires Inclusion of All Pertinent Information.** The due date for proposal submission must be included in the request, as well as any information concerning pre-proposal meetings and the need for board approval of the selected offeror.

Advantages of using competitive negotiation (RFP) are:

- **Flexibility in Assigning Responsibilities.** Based upon the responses received from the offerors, the SFA decides which functions will be performed by the Caterer.
- **SFAs Benefit During Periods of Falling Prices.** RFPs that result in cost-reimbursable contracts allow the SFA to take advantage of price declines during periods of falling prices.

- **Greater Flexibility in Selecting Caterer.** The SFA has more flexibility in selecting a Caterer because the SFA is not limited to selecting the offeror that submits the lowest price bid.

Disadvantages of using competitive negotiation (RFP) are:

- **Complex Monitoring.** The monitoring of revenue and expenses under the contract will be more complex because Federal cost principles, referenced in 7 CFR Part 3016.22(b) apply to cost-type contracts. In addition, 7 CFR section 210.21(f) highlights requirements for contractors billing SFAs under cost-reimbursable contracts. The SFA must review specific items of cost the Caterer charges to the food service account for conformity to these cost principles.
- **Unbudgeted Costs During Periods of Rising Prices.** RFPs that result in cost-reimbursable contracts may result in additional costs to the SFA during periods of rising prices.
- **Potential Reopening of Negotiations.** Under an RFP, the contract is prepared based upon the negotiations. The contract should not be finalized until the ADE reviews the document. If deficiencies are noted it may be necessary for the SFA to reopen negotiations.
- **Essential Skill and Experience.** The negotiation process requires that the SFA possess significant skill and experience in negotiating, contracting and financial management. It may be necessary for the SFA to hire individuals to provide the needed expertise, which can be cost prohibitive. Attempting to negotiate without the needed expertise can result in the SFA entering into a contract that meets regulatory requirements and is fully enforceable, but is detrimental to the SFA.
- **Unexpected Responsibilities.** To the extent that the SFA has not identified whether it or the Caterer will perform certain functions the SFA may incur duties and related costs not planned or budgeted.

Competitive Sealed Bids: Also known as Invitation for Bid (IFB), is a method of procurement in which sealed bids are publicly solicited, through an IFB, resulting in the award of a firm fixed-price contract to the responsible bidder whose bid is responsive to the IFB, conforms with all the material terms and conditions of the IFB, and is lowest in price. In this case, the IFB must be publicly advertised and bids must be solicited from at least five suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

Factors to consider when using competitive sealed bids (IFB) are:

- **Fixed Scope of Services.** The SFA has identified exactly which services and costs it wishes to contract out to the Caterer.
- **Legal Advice Needed.** The SFA should obtain legal advice in the development of a contract for inclusion in the IFB.
- **No Negotiation Involved.** The SFA either does not wish to, or lacks the needed experience to, negotiate price and contractual responsibilities with the Caterer.
- **Competition Available.** More than one Caterer is willing and able to compete effectively for the contract.

- **Responsible/Responsive Bidder.** The bid will be awarded to the responsive/responsible bidder that submits the lowest responsive bid. The SFA must include sufficient information in the IFB to allow bidders to properly respond, thus enabling the SFA to determine responsiveness.
- **Required Information.** The place and time the bids will be opened and the award made must be included in the invitation, as well as any information concerning pre-bid meetings and the need for board approval of the selected bidder. If bid and/or performance bonds will be required, the amount, any requirements concerning the bonding firm and when the bond(s) must be provided to the SFA, must be included in the invitation.

Advantages of using competitive sealed bids (IFB) include:

- **Advance Preparation.** The contract is prepared prior to soliciting bids. This generally allows the SFA to more accurately estimate costs and assign staff resources well in advance of the effective date of the contract. The pre-bid preparation of the contract also permits the SFA to arrange for its legal authorities to review the contract provisions for legal sufficiency without the pressures of negotiation.
- **Easier Identification of Revenues and Expenses.** Fixed-price contracts more easily permit the SFA to identify anticipated revenues and expenses, as well as the total anticipated cost of the contract.
- **No Negotiation Responsibilities.** The SFA is relieved from negotiating both the cost and responsibilities with bidders.
- **Simplified Monitoring.** The monitoring of the status of the nonprofit food service account is not difficult. Transactions are restricted to processing billings from and payments to the Caterer. The Caterer does not pass costs on to the SFAs.

Disadvantages of using competitive sealed bids (IFB) are:

- **Demands Precise Identification of Needs.** If the bid document does not clearly identify the services requested, the bid prices and the services provided by the Caterer may not be reasonable or responsive to the SFA's needs.
- **May Limit Competition.** During periods of rapidly rising prices, prospective bidders may decline to bid on a fixed-price basis or bid overly high. In situations where prices are declining, fixed-price contracts do not allow the SFA to benefit from the decline.

An RFP is what the SFAs use primarily in the State of Arizona and therefore most of ADE guidance surrounds the RFP. To learn more about IFB, please contact Ellen Pimental at (602) 542-6208 e-mail at Ellen.Pimental@azed.gov.

Creating an Effective Request for Proposal

The RFP must clearly communicate the purpose and goals of the Caterer. The quality of the proposals the SFA receives is directly related to the quality of the RFP issued. It is required for SFAs to use the ADE RFP template. The RFP includes the following sections:

- Cover Page;
- Offer of Acceptance and Contract Award;
- Scope of Work;
- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Special Instructions to Offerors;
- Uniform Instructions to Offerors;
- Pricing;
- Attachments; and
- Exhibits.

Cover Page

The RFP Cover Page contains basic information for the Caterer such as:

- School District name;
- Solicitation number;
- Solicitation due date and time;
- Proposal submittal information;
- Description of the procurement; and
- Procurement Officer name.

Acceptance of Offer and Award Form

The Acceptance of Offer and Award form is used to create an Agreement between two parties. Each SFA approved RFP, with all appendices, attachments, exhibits and amendments, becomes the final contract between the SFA and Caterer when the Acceptance of Offer and Award form is signed. When the Offeror (Caterer) submits a signed form with their proposal, this demonstrates that the Caterer is willing to enter an Agreement with the SFA. When the Caterer is selected, the SFA signs the form which states "Your Offer, dated, is hereby accepted as described in the Notice of Award. You (Caterer) are now bound to perform based upon the solicitation and your Offer, as accepted by the SFA." There is no need for a separate contract to be created.

Code of Federal Regulations Provisions

The Code of Federal Regulations (CFR) provides rules that SFAs must observe if they are to participate in: NSLP, SBP, SMP, and other meal programs. All contracts require that the Caterer comply with 7 CFR Parts 210, 215, 220, 245, 250 and FNS instructions and policies, as applicable. Under your agreement with ADE, the SFA is responsible for operating the school nutrition programs in schools under their jurisdiction. These programs include the:

- NSLP;
- SMP;
- SBP;
- SFSP;
- ASCS;
- FFVP; and
- USDA Foods.

Scope of Work

Developing the Scope of Work is the most critical part of the RFP and will be used to select a Caterer. It is important that your Scope of Work be clear and understandable so that the Caterers can comprehend the needs of the SFA. Good proposals will make the evaluation process easier and will increase the chances that the SFA will get what is desired. A vague and unclear Scope of Work can result in higher prices as service providers may have a hard time understanding the limits of the SFA requirements.

Background

The Background should state the specific CNPs that the SFA wants the Caterer to serve. Please note CNPs listed in this section are the only programs that the Caterer can operate during the life of the contract. They are:

- National School Lunch Program (NSLP);
- School Breakfast Program (SBP);
- Seamless Summer Food Service Program (SFSP) or Simplified Summer Food Service Program (SFSP);
- Special Milk Program (SMP);
- Fresh Fruit and Vegetable Program (FFVP); and
- After School Care Snack Program (ASCS).

The SFA must explain where the Caterer will be delivering the meals and children's ages/grades the Caterer will serve. Also the SFA must state if they want the price to include milk or juice.

Each RFP includes the following SFA responsibilities:

- The SFA retains control of the nonprofit school food service account and overall financial responsibility for the school nutrition programs.
- The SFA retains signature authority on the FPPSA to participate in NSLP, SBP, SFSP, ASCS, and SMP, including the SFA's free and reduced-price policy statement and the monthly Claim for Reimbursement.
- The SFAs are not allowed to give the responsibility to determine free and reduced-price eligibility to any company or person(s) working for the Caterer.

Method of Approach and Implementation Plan

The RFP includes a section detailing how the Caterer purchases food that will keep food quality high and costs low. The RFP requires the Caterer to adhere to nutrition guidelines and include expenses for the program. The Caterer must be knowledgeable about the food and ingredients, menu patterns and production before the Caterer can select food supplies with any degree of accuracy and cost-effectiveness.

The RFP provides detailed specifications for each food component (meat or meat alternate, milk, bread or bread alternate and vegetable/fruit) or menu item specified in the CFR. Specifications must cover

items such as grade, style condition, weight and ingredients. It is crucial to be as specific as possible in this section.

The Caterers submit with their proposal a suggested 21-day menu cycle. The SFA requires that any changes to the menu cycle made after the first 21 days include foods that are priced the same and have the same quality of those items on the original cycle menu.

Special Terms and Conditions

The Special Terms and Conditions section is where the terms and conditions, which are specifically relevant to the food service operations, are discussed. The Special Terms and Conditions, Uniform Terms and Conditions and Special Instructions to the Offeror will govern the preparation and submission of proposals. Any Special Terms required by the CFR are included in this section. The following provisions are required for all RFPs.

Insurance Requirements

Contracts for food service operations should contain language about insurance requirements for the Caterer. The insurance requirements will protect the interests of the SFA. Contracts generally identify three liabilities:

- Comprehensive general liability;
- Workman's compensation; and
- Vehicle insurance.

SFAs are reminded that the cost of unnecessary insurance is unallowable under the federal cost principles. In the ADE RFP template, the insurance information is consistent with what the State of Arizona requires of contractors.

Contract Duration

Clarifies the contract start date and that the contract duration is no longer than twelve (12) months.

Contract Options

Clarifies that the contract may have only four (4) additional one-year extensions and the contract may not exceed five (5) years.

Termination

The SFA may terminate the contract for cause, or for convenience with 30 days notice.

Non-Performance Sanction

Any RFP must define non-performance violations and specified sanctions defining “breach of contract” terms by the Caterer. These sanctions must be addressed in accordance with federal and state procurement provisions.

Pricing Adjustments

The Pricing Adjustment section must include a provision which allows the SFA to retain control of the establishment of all prices, including price adjustments, for meals served under the non-profit school food service account (e.g., pricing for reimbursable meals, ala carte service including vending machines and adult meals).

Payment/Invoices

Any accounting period referenced in an RFP must be defined and utilized in a way that will provide monthly and yearly fiscal integrity for Claims of Reimbursement submitted to ADE. The RFP must include the required provisions that pertain to the following:

- No payment will be made for meals that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA.
- The Caterer must provide a credit monthly to the SFA for the value of all USDA Foods received for use in the SFA's food service.
- The Caterer shall present to the SFA an invoice accompanied by reports no later than the predetermined day of each month which itemizes the previous month's delivery.
- The SFA shall pay the Caterer, by the predetermined day of each month, the full amount as presented on the monthly itemized invoice.

Meal Estimates

The SFA shall provide in writing, a reasonably accurate estimate of the number of meals to be delivered to the SFA each day.

Buy American Provision

This required provision must be correctly applied to the procurement process to ensure that its application does not restrain or restrict competition. This provision requires the SFA to purchase domestically grown and processed foods, to the maximum extent practicable. The law defines "domestic commodity or product" as one that is substantially produced and processed in the United States using agricultural commodities that are produced in the United States. The report accompanying the Law stipulates that "substantially" means that over 51% of the final processed product consists of agricultural commodities that were grown in the United States.

Equal Employment Opportunity

This provision prohibits federal contractors from discriminating in employment on the basis of race, sex, religion, color or national origin. It also requires contractors to take affirmative action so that minorities and women have equal job opportunities and requires federal contracts to include a clause spelling out contractor's non-discrimination and affirmative action obligations.

Contract Work Hours and Safety Standard Act

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts of \$100,000 or more. The Act requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their base rate of pay for all hours worked over 40 hours in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federally financed projects.

Clean Air Act, Clean Water Act and Environmental Protection Agency Regulation

This is a federal policy to improve environmental quality. This policy ensures that any grant, loan or contract using federal dollars will enforce the Clean Air Act and the Water Pollution Control Act.

Energy Policy and Conservation Act

All contractors who are paid with federal dollars are required to follow the Energy Policy and Conservation Act. This Act requires each contractor to adopt energy efficiency measures. The Energy Conservation Act creates a legal framework to promote energy efficiency.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

This certification is required by the regulations in Executive Order 12649. The Caterer certifies that neither the Caterer nor its leaders are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with the SFA. The Caterer must complete the attachment and submit it with their proposal.

Certification Regarding Lobbying

Each Caterer must certify that no federal appropriated funds have been paid or will be paid, for influencing or attempting to influence an officer or employee of any agency. The Caterer must complete the attachment and submit it with their proposal.

Disclosure of Lobbying Activities

The regulation is intended to prevent the use of federal funds for lobbying and also to monitor the lobbying expenditures of federal funds recipients. The Caterer must complete the attachment and submit it with their proposal.

Civil Rights Compliance

Each Caterer must agree to comply with all federal Civil Rights Acts and Amendments. Each Caterer must be in compliance with the following:

- Title VI of the Civil Rights Act of 1964 and implementing regulations, which prohibit discrimination on the basis of race, color and national origin.
- Title IX of the Education Amendments of 1972 and implementing regulations, which prohibit discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973 and the 1990 Americans with Disabilities Act, which prohibit discrimination on the basis of disability.
- The Age Discrimination Act of 1975 and implementing regulations, which prohibit discrimination on the basis of age.
- The U.S. Office for Civil Rights Career Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap prohibits unlawful discrimination in career education programs.

Compliance with Program Regulations

The Caterer will conduct program operations in accordance with CFR Parts 210, 215, 220, 225, 245 and 250. These CFR provisions regulate the CNP.

Certification of Independent Price Determination

The Caterer admits that all prices in the Caterer's proposal have been arrived at independently. This certification ensures that the Caterer is not trying to restrict competition or conduct collusion. The Caterer must complete the attachment and submit it with their proposal.

Claim Liability

The Caterer accepts liability caused by the Caterer's negligence or for claims assessed as a result of Federal/State reviews/audits. Also, a provision must be included that ensures the Caterer accepts liability for any negligence on its part that results in any loss or damage to USDA Foods.

Menu Records and Documentation

In the records and documentation section the following items are covered:

- The SFA must state which menu planning option the sites will use such as: Traditional, Enhanced or Assisted Nutrient Standard.
- The Caterer must obtain the SFA's approval to change the menu during the life of the contract.
- The Caterer shall provide a reimbursable lunch or breakfast meal to meet the various calorie and nutrient levels relevant to the ages/grades of the children. Also, the Caterer shall plan and produce at least enough food to offer each child the minimum quantities under the meal pattern.
- The Caterer shall maintain full and accurate records/production worksheets.
- The Caterer shall provide the SFA with copies of all documentation.
- The Caterer agrees to provide meal preparation documentation by using yield factors for each food item as listed in the USDA Food Buying Guide when calculating and recording the quantity of food prepared for each meal.
- The SFA shall ensure that an SFA representative is available at each delivery site, at the specified time on each specified delivery day to receive, inspect, and sign for the requested number of meals.

Location of Records

The SFA is required to maintain any books, documents, papers and records directly pertinent to the solicitation, award, or extension of any given contract and the implementation of that contract. All records must be maintained for a period of five (5) years. The SFA is required to make all records available to ADE upon request.

Health Certification

The Caterer will maintain valid and necessary health certification(s) and assure that all state and local regulations are being met such as:

- The Caterer shall have State or local health certification for any facility outside the school in which it prepares meals and shall maintain this health certification for the duration of the contract. 210.16(c)(2)
- The Caterer shall be responsible for maintaining the premises, equipment and facilities in a condition satisfactory to the School Board. The Caterer shall adhere to the standards of cleanliness and sanitary practices as required by the Health Department, the School Board standards, and USDA standards to insure continual sanitation in all functions and matters related to the food service program.

- The Caterer shall maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirements.

Hazard Analysis and Critical Control Point (HACCP)

Upon request, the Caterer shall provide the Sponsor, evidence of daily worksheets that detail HACCP compliance from receipt to delivery of the finished product.

USDA Foods

If the SFA elects to participate in the Food Distribution Program, the SFA retains title to the USDA Foods. The SFA must ensure that all USDA Foods received are made available to the Caterer. Specifically, the SFA should:

- Ensure the Caterer credits the SFA for the value of all USDA Foods received for use in the SFA's meal service in the school year or fiscal year. All forms of crediting must include clear documentation of the value received from the USDA Foods.
- Ensure the Caterer uses all donated ground beef, donated ground pork, and etc., in the SFA's food service.
- Ensure that when the contract terminates and is not extended or renewed, the Caterer returns all unused donated ground beef, donated ground pork and processed end products.
- Ensure the Caterer meets the CFR general requirements for the storage and inventory management of USDA Foods.
- Ensure the Caterer has a system of inventory management which does not result in the SFA being charged for USDA Foods under cost-reimbursable contracts.

Uniform Terms and Conditions

In this section, the SFA should use the Uniform Terms and Conditions that are used for all the other SFA's RFPs. The Uniform Terms and Conditions are available in the ADE RFP template and represent those commonly used by Arizona SFAs.

Contract Order of Precedence

ADE highly recommends that each RFP includes a section named the "Contract Order of Precedence". This section describes that, in the event of a conflict in the provisions of the contract, the following sections shall prevail in the order set forth below:

- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Statement of Scope of Work;
- Specifications;
- Attachments;
- Exhibits;
- Special Instructions to Offerors; and
- Uniform Instructions to Offerors.

Special Instructions to the Offeror

The Special Instructions to the Offerors section provides proposal submission instructions to the Caterer.

Definition of Terms

In this section, the RFP must list all terms that will be used in the Special Instructions, as well as the definition of the term. The SFA can add additional terms to the RFP.

Required Information

This section lists all the attachments that the Offeror must submit with their proposal. Each SFA can modify this section to meet their needs.

Authorized signature

In this section, the Caterer must include the owner, partner or corporate office authorized to sign the contractual agreements. This section also explains who must sign for the Vendor depending on the type of ownership, such as:

- Privately owned;
- Partnership; or
- Corporation.

Pre-Offer Conference

In this section it specifies:

- Where the Pre-Offer Conference will be held; and
- The SFA staff contact information.

Proposal Opening

This section identifies the location of the proposal opening, as well as explaining to the Caterer that the proposal will not be subject to public inspection until after contract Award.

Award of Contract

Each RFP must state that the Award of a contract will be made to the most “Responsible” Offeror whose Proposal is determined to be the most advantageous to the SFA based on the evaluation criteria set forth in the RFP.

Suspension or Debarment Certification

This section provides information to the Caterer about the suspension or debarment certification and the attachment the Caterer must complete for the proposal.

Certification Regarding Lobbying

The certification regarding lobbying information section explains the attachment the Caterer must complete for the proposal.

Certificate of Independent Price Determination

The certification of independent price determination information specifies and identifies the attachment the Caterer must complete for the proposal.

Inclusive Offeror

The Caterers are encouraged to make every effort to utilize subcontractors that are small, women and/or minority owned business enterprises.

Federal Immigration and Nationality Act

The Caterer states that they shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees.

Offer Format and Content

This section details proposal format requirements and the number of proposal copies that must be submitted to the SFA, as well as explaining procedures to be used by vendors when submitting any exceptions to the RFP.

- “If the Offeror finds it necessary to take exception(s) to any of the requirements specified in this Solicitation, the Offeror must clearly indicate each such exception in the proposal and complete explanation of why the exception was taken. All substantive exceptions and supporting rationale shall be identified as such and consolidated into one section of the Offer.”

Format

The Format of the submitted proposal should have four (4) sections:

- **Executive Summary.** The Procurement Officer can review this section to determine if the Caterer meets the Qualifications of the Offeror.
- **Pricing.** In the Pricing section, the Caterer places their proposed price per meal charged to the SFA.
- **Method of Approach and Implementation Plan.** This section describes how the Caterer will complete the Scope of Work responsibilities to the extent possible for evaluation purposes.
- **Offeror’s Experience, Expertise and Reliability.** In this section, the Caterer provides information about their knowledge and dependability.

Evaluation and Optional Terms

The RFP must specify methods used by the SFA to evaluate proposals. Only proposals that are “Responsive” will be evaluated and the proposal selected will be the most advantageous to the SFA.

Discussions

The RFP must state that the SFA reserves the option to conduct discussions with those Offerors who submit an Offer determined by the SFA to be “Reasonably Susceptible” of being selected for Award.

Final Proposal Revisions

In the event the Procurement Officer determines discussions on the areas, items and factors specified in the solicitation will be held with all Caterers determined to be in the competitive range. These discussions require that:

- The Caterer will be permitted to make revisions during negotiations.
- The Caterer will be aware that a complete understanding as to pricing, CNP and all other terms and conditions of the proposed contract must exist between the Caterer and SFA at the conclusion of negotiations.
- Discussions will be concluded when a mutual understanding has been reached with each Offeror remaining in the competitive range and will become the basis for the Caterers final proposal revision.
- The final proposal revision must be signed, dated and returned to the SFA by the Caterer within the time and date specified to be eligible for Award.

Uniform Instructions to the Offerors

In this section, the SFA should use the Uniform Instructions to the Offerors that are used for all the other SFA's RFPs. The Uniform Instructions to the Offeror are included in the ADE RFP template and represent those commonly used by Arizona SFAs.

Pricing

RFP Pricing

The Caterer will be paid at a fixed rate per meal. The SFA must determine the existence of the proper pass through value of the USDA Foods such as; credits or reductions on the invoice in the month of utilization.

Attachments

RFP attachments are documents that the Caterer completes and submits with their proposal. Each attachment should only include one topic and provide information to the SFA regarding the Caterer's ability to meet the SFA's needs. Below are the attachments contained in the ADE RFP template.

Qualification of Offeror

The Caterer provides a list of their current contracts with SFAs in Arizona. The Caterer must also provide information regarding their qualifications to deliver CNP meals to SFA. This allows the Procurement Officer to determine if the proposal is "Responsive".

References

The SFAs can contact the Caterer's references to gain information on how the Caterer previously performed.

Breakfast Menu and Lunch Menu

The SFA must state the menu style it requests of the Caterer such as: Traditional, Enhanced, Assisted Nutrient Standard or Nutrient Standard. The Caterer must then develop 21-day menus that will meet the CNP meal plan requirements.

Caterer's HACCP and Quality Control Measures

The Caterer will describe how they will comply with the Hazard Analysis and Critical Control Point (HACCP) principles and meet the USDA guidance for developing a process approach to HACCP.

Caterer's Information

The Caterer will provide information about their experience in providing the CNP to SFAs.

Supplier Information

The Caterer will provide a list of suppliers the Caterer will use and how they will comply with the "Buy American" provision.

Adherence to Federal Guidelines

The Caterer will describe how they will adhere to federal and other regulations for the dietary menus.

Approach to USDA Foods

The Caterer will describe how they will use the USDA Foods in the SFA's menus. The SFA must delete this attachment if the SFA will not be receiving USDA Foods.

Employee Information

The Caterer will provide information about workers who will assist with the food operations at the SFA. The SFA must delete this attachment if the Caterer will not be providing employees to the SFA during the CNP.

Conflict of Interest

The Caterer must state that there is no conflict of interest associated with the award of this contract. Furthermore, they must report that no one employed by the SFA is related to or has any other personal or professional relationship with the Caterer and/or his/her family.

Discontinued or Terminated Services

The Caterer includes a list of SFAs with whom food service operations were terminated or discontinued within the five years.

Exhibits

Exhibits are utilized by the Caterer in the preparation of their proposals, but not returned with their proposal. The SFA should include information in the exhibit section that will assist the Caterer in developing their proposals for the SFA's RFP. The exhibits that ADE recommends are:

- Student populations served and participation figures;
- SFA meal prices/income;
- 21-day sample breakfast menu;
- 21-day sample lunch menu;
- Standardized Recipe Form Sample; and
- Sample product descriptions and specifications for 21-day cycle menus.

RFP Evaluation Rubric

While developing the RFP, the SFA must create an effective RFP Evaluation Rubric. The RFP Evaluation Rubric is used during the planning and procurement phase of an RFP to analyze the submissions received in response to an RFP. The Evaluation Rubric is a detailed summary of the criteria for assessing each section of the Caterers proposal. It evaluates only the information in the RFP Scope of Work and Attachments. Note that any part of the solicitation requiring a response by the Caterer should be part of the evaluation. The Evaluation Rubric must accomplish the following:

- Evaluates the Caterer's responses to the information in the Scope of Work.
- Evaluates the Caterer's responses to the information in the attachments.
- Points that are clearly documented on the Evaluation Rubric.
- Provides a space available for each evaluation team member to document their comments.
- Uses a scoring method where the responses can be evaluated fairly.

ADE requires that SFAs use the ADE RFP Evaluation Rubric. For evaluation purposes, the RFP presents a weighting system, listed in the order of importance:

- Pricing (weight 40%);
- Method of Approach and Implementation Plan (weight 35%); and
- Offeror's Experience, Expertise and Reliability Section (weight 25%).

Pricing Scoring

When scoring the Pricing section, each proposal will receive a ranking based on price and the points will be given depending on the pricing as compared to the other proposals.

Once the lowest price is chosen, the evaluation will be score, based on percentages. The formula is:

X = Lowest Price out of all respondents

Y = Respondent being evaluated

Z = Number of Points available

The Formula is: X divided by Y times Z equals Total Points $(X/Y)Z$

Scoring

Below is the scoring that may be used to subjectively evaluate the "Method of Approach and Implementation Plan" and "Offeror's Experience, Expertise and Reliability" sections. This scoring provides the evaluation team members structure to score each proposal section they review.

"Poor" shall mean the prior services and technical experience stated in the proposal do not meet the RFP requirements. The evaluator should give 0% to 19% of the points available.

"Fair" shall mean that the prior services and technical experience stated in the proposal meet most, but not all of the RFP requirements. The evaluator should give 20% to 39% of the points available.

“Good” shall mean that the prior services and technical experience stated in the proposal meet the RFP requirements. The evaluator should give 40% to 59% of the points available.

“Very Good” shall mean that the prior services and technical experience stated in the proposal exceeds most, but not all of the RFP requirements. The evaluator should give 60% to 79% of the points.

“Exceptional” shall mean that the prior services and technical experience stated in the proposal far exceeds all of the RFP requirements. The evaluator should give 80% to 100% of the points.

ADE Review Process

The contract between an SFA and a Caterer should meet the best interest of the SFA and must conform to federal, state and local requirements in a cost-effective manner. ADE requires that it reviews each contract (including all supporting documentation) annually between any SFA and Caterer to ensure compliance with all the CFR provisions. ADE has developed an RFP template for use by the SFA that meets the required provisions and standards.

Also, the procurement must specify the method used to determine the USDA Foods value to be used in crediting, or the actual values assigned, in accordance with the federal regulations. When reviewing the SFA's documents, ADE must ensure that the solicitation documents have been modified by the SFA and not the Caterer competing for the procurement. Therefore, ADE requires the SFAs to use the documents developed by ADE.

ADE must ensure that the SFA procurement documents include all required provisions and do not contain any unallowable provisions. To gain ADE approval, the SFA must use ADE solicitation documents such as:

- RFP; and
- Evaluation Rubric.

When the above documents have been approved, the SFA can begin the solicitation process. Once a proposal has been selected, but before notifying the selected Caterer, the SFA must send ADE the following:

- Selected Proposal;
- All evaluation team members' scores and comments for each proposal scored; and
- Copy of the Vendor List that the RFP was sent to.

ADE will then review all of the above materials to ensure CFRs are met. If the CFRs are met, ADE will approve the SFA to move forward with the procurement process. When the Award has been made the SFA must send ADE the following within ten (10) days:

- Signed copy the Offer of Acceptance and Award form;
- Signed copy of contract (if applicable); and
- Signed copy of the Certification of Independent Price Determination form.

Free and Open Competition Procurement Process

The underlying foundation of all procurement, without regard to dollar competition value, is that regardless of the method used the procurement must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Examples of such restrictions include, but are not limited to, unallowable procurement methods:

Unreasonable Requirements

Placing unreasonable requirements on firms in order for them to qualify to do business, e.g., requiring unnecessary experience and bonding requirements.

Noncompetitive Practices

Encouraging or fostering noncompetitive practices, e.g., collusion between firms.

Conflicts of Interest

Conflicts of interest can occur when individual(s) responsible for determining bid/proposal responsiveness can be overruled by other individuals within the organization; or if the individual responsible for determining responsiveness (or any member of his or her family) has personal or corporate ties or financial interest in any of the offering firms.

Inappropriate Practices

The following would be considered inappropriate practices:

- Using specific information or other documents prepared by Caterers in the IFB or RFP.
- Entering into discussions with a company prior to evaluating every proposal that was submitted to the school for that service.
- Discussions with any bidder, at any time, when the competitive sealed bid procurement method is used, unless specifically allowed in the procurement code.
- Providing only certain firms with the results of the Pre-Offer Conference or releasing the contents of a proposal to other Offeror(s).

Insufficient Time

Not allowing bidders/Offerors enough time to submit an Offer when advertising/soliciting the IFB/RFP.

Geographical Preferences

The recently enacted Food, Conservation, and Energy Act of 2008, also known as the Farm Bill, amended the National School Lunch Act to allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products.

Unprocessed products are those products that have not been cooked, seasoned, frozen, canned, or combined with any other products. Acceptable useable forms of these unprocessed products include:

“washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.”

While the statute permits institutions to apply a geographic preference to the maximum extent practicable and appropriate, it does not require institutions to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products. States cannot mandate through law or policy that institutions apply a geographic preference when conducting these procurements. The National School Lunch Act grants this authority directly to the institutions. The institution responsible for the procurement has the discretion to determine whether and how a geographic preference meets its needs.

Another key to a “good procurement” is “fairness and integrity”. “Fairness and integrity” in all aspects of the procurement process is critical to achieving “free and open competition”. The procurement process cannot be both effective and self-serving. No matter how strongly an SFA official may prefer a particular product or supplier, other comparable products and suppliers must be given every reasonable consideration. An SFA must ensure ethical safeguards exist and are maintained at all levels in the organization and in all aspects of the procurement process.

Another key principle to a “good procurement” is all Awards must be made to “Responsive” and “Responsible” contractors. SFAs must make Awards only to those contractors:

- Who are "Responsive" because their product or service meets the SFAs specifications.
- Who are "Responsible" because they can and will successfully fulfill the terms and conditions of the proposed procurement.

To gauge contractor responsibility, the SFA can begin by investigating the contractor's:

- Integrity;
- Compliance with public policy;
- Record of past performance; and
- Financial and technical resources.

If it is determined that the contractor is “Not Responsible” the decision must be carefully documented and the contractor becomes ineligible for Award.

Finally, a “good procurement” process must always be transparent. "Transparent" means all actions taken by the SFA must be:

- Clear;
- Above-board; and
- Out in the open for public scrutiny.

RFP Timelines

An adequate time period should be allowed for a Caterer to receive and respond to a released RFP. ADE requires 45 days to be allowed for RFPs from the time proposals are solicited to the time that they are due. (It should be noted that additional time must be given for procurement under an RFP to allow for such things as proposal evaluation, discussion with Offerors, contract development, etc.) Provided the IFB/RFP has been properly prepared, an adequate amount of solicitation time works to the advantage of both the SFA and the Offeror and contributes to an effective and efficient procurement process.

Advertising Methods

Under both the IFB and RFP procurement types, bids/proposals shall be solicited directly from an adequate number of prospective vendors. The IFB/RFP shall be publicized in order to provide for maximum open and free competition if there are less than four (4) or fewer prospective vendors respond (Refer to R7-2-1022 for more information). To ensure the RFP is sent to four (4) or more vendors, copies of the complete IFB/RFP should be sent by registered mailed and emailed to those Caterers that are believed to be qualified and that might reasonably be expected to respond to the solicitation. This may include Caterers that are currently doing business with other SFAs in the state, in adjoining states, or elsewhere. ADE has a complete list of all vendors who are contracting with SFAs in Arizona.

Proposal Evaluation Plan

The purpose of the Evaluation Plan is to describe how the proposals will be received, logged and evaluated to select a proposal. The overall goal of the evaluation process is to select the proposal that is most advantageous to the SFA for performing the food service operations. Proposals must be thoroughly reviewed and receive an impartial evaluation. The items that would be included in the Evaluation Plan are listed below.

Information on Evaluation Team

It is recommended that there be a minimum of three (3) team members. The team may be comprised of principals, teachers, parents, administrators, school board members or other individuals who may have involvement with the food service operation. Due to the complexity of the process, students should not serve as committee members.

When developing a team, the SFA should determine the:

- Size of the evaluation team;
- Expertise required of the evaluation team; and
- Names of the team members.

Scoring System

Each section must evaluate information from the Scope of Work and attachments listed. The Evaluation Rubric must include team member's comments.

Ancillary Materials

Put together the Evaluation Rubric and any other documentation that may be needed. The Evaluation Rubric should include the evaluation criteria, standards to be applied, scoring columns and room for comments. Individuals who will be evaluating the proposals should have appropriate knowledge of the goals of the SFA, experience in school food service or congregate feeding, financial management experience (food service, if possible) and experience in evaluating proposals.

Proposal Opening and Evaluation

Proposals should not be opened or reviewed until after the due date specified in the RFP. The person responsible for receiving the proposals must store each proposal in a secure location to prevent the opening of the documents before the deadline. It is important to involve people from the SFA administration and those who will have day-to-day contact with the Caterer in the evaluation process.

On the date specified for opening and evaluating the proposals, each member of the evaluation team must sign a disclosure/confidentiality statement and score each proposal individually. If the SFA determines a Caterer's proposal is unacceptable, they shall notify the Caterer of the determination and the Offeror shall not be afforded an opportunity to amend its Offer.

RFP Evaluation Committee Guidelines

Committee Objective

The objective of the evaluation committee is to recommend the Caterer whose proposal is most “Responsive” to the SFA’s needs within available resources.

Committee Tasks

In order to fulfill this objective, the committee members will be required to perform the following tasks:

- Read each proposal independently to begin the evaluation.
- Evaluate each proposal against established evaluation criteria.
- The Procurement Officer should compile and analyze results.
- Aid in defending the Award against vendor protests if applicable.

Committee Rules and Procedures

Below are some suggested committee rules and procedures for an SFA to use for guidance in operating their RFP Evaluation Team.

- Each member will be asked whether he/she has a personal interest in any participating vendor and if he/she understands and can perform within the ground rules and procedures.
- Each member should have no personal/financial interest in the vendor that is recommended for Award. All personal and financial conflicts must be reported on the Conflict of Interest Statement.
- Each member should have a professional interest in ensuring the results of the committee can be supported and defended.
- Each member should have a professional interest in ensuring the recommendation of the committee will lead to the selection of a vendor that can and will operate the SFA’s food service operations in an acceptable manner.

Caterer Contact

Caterer contact must only occur via the SFA Procurement Officer. If the Caterer contacts a member of the committee, the SFA Procurement Officer must be immediately notified. Members should not participate in individual meetings, lunches, entertainment or any other direct contact with Caterers once the member has been appointed to the evaluation committee. In addition, the committee should set aside all prejudices and perform proposal evaluations in as fair a manner as possible. Prior knowledge of a Caterer shall be used judiciously and pertain only to current situations.

Confidentiality

During the evaluation process and while meetings are in session, the committee must maintain confidentiality. No member will communicate preliminary conclusions or results of what was bid by the vendors, or that a given vendor will be selected. All internal workings of the committee shall be kept confidential until the committee has completed its work and its report and all Caterers have been officially notified of the selection. After receipt of proposals, each member shall conduct an individual evaluation of each proposal. The committee will meet to discuss their individual evaluations. During

committee discussions, each member may change their initial scoring as they see fit. Final scores for each vendor will be totaled by the Procurement Officer for the committee.

Only One Proposal

If only one response was received for the released RFP and the SFA determined that the one proposal is acceptable, the SFA must state in a document that adequate time was allowed for any and all parties to respond and all other requirements for soliciting adequate competition were met. Also, the document must state that evaluation criteria was adequately addressed by the respondent as determined by the evaluation committee. In addition, the SFA must state that the price is fair and reasonable based on factors to include current market analysis, similar pricing at other SFAs for same services and historical pricing for similar services. Contact ADE for more information and for a template available to SFAs.

If only one proposal was received, the proposal must be evaluated by an evaluation team with the same consideration as if several had been received.

Best and Final

In many negotiated procurements, a provision is made for the Caterer to submit a “Best and Final Offer” prior to completion of the evaluation process and the selection of the winning Caterer. Although “Best and Final Offers” vary in content and depth, the vital component of a “Best and Final Offer” is always a final quoted price for accomplishment of the work. Keep in mind that the information in the “Best and Final Offer” cannot result in a “material change” to the solicitation.

Procurement Protest Procedures

Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. Pursuant to 7 CFR Part 3016.36(b) (12), SFAs must have protest procedures in place to handle and resolve disputes relating to their procurement and must in all instances disclose information regarding a protest to ADE.

In the event that a vendor believes that there has been a violation during the procurement process, the vendor has the right to file a Procurement Protest. If an SFA receives a Procurement Protest, ADE requires the SFA to do the following:

- Notify ADE of the Procurement Protest;
- Provide ADE with a copy of the SFA’s Procurement procedures; and
- Provide ADE with copies of all the Procurement Protest documentation.

ADE will ensure that the SFA followed their Procurement Protest Procedures and expects SFAs to resolve disputes relating to procurements.

Contract Amendments

Per the CFR, contracts must be of a duration no longer than one-year. Annual contract amendments are allowable as long as they do not exceed four (4) additional one-year extensions from the original contract period. Contracts must not contain automatic renewal provisions. Any provisions, including adjustments to payments that will be used for contract amendment, must be stated in the contract and the IFB or RFP, as applicable. While contract amendments are permitted, an SFA is not required to amend the contract for an additional year and should do so only after careful evaluation of the Caterer's performance and a determination that the amendment will benefit the SFA. The elements that should be used when deciding whether to renew a contract are listed below.

Contract Material Change

The following changes would not constitute material changes to the contract:

- Number of schools added;
- Changes in enrollment such as decreases and increases in student enrollment and the corresponding change expected in participation;
- Changes in the price per meal;
- Cost increases limited to a measurable index (such as the Consumer Price Index for All Urban Consumers); and
- Minor adjustments to the per meal equivalency.

Examples of material changes that may require the SFA to re-solicit the contract include, but are not limited to, the addition of a program, such as the SBP or SFSP.

If an SFA is unsure if something is a material change, they should contact ADE. ADE reserves the right to review a material change for compliance with the original solicitation documents in the interest of open and fair competition.

ADE Approval

ADE must review and approve the contract amendment prior to obtaining signatures from both parties. Changes to the contract cannot result in a material change. In order to approve the amendment, the SFA must provide the following documents:

- Copy of an unsigned contract amendment;
- Completed Catering Contract Checklist;
- Signed copy of the Certification Regarding Debarment and Suspension;
- Signed copy of Certification of Independent Price Determination; and
- Signed copy of the Certification Regarding Lobbying.

Once ADE has approved the contract amendment, the SFA must send ADE the signed copy within ten (10) days.